RUDY S. SUTLOVICH

IBLA 94-713 Decided April 14, 1997

Appeal from a decision of the Idaho State Office, Bureau of Land Management declaring an unpatented mining claim abandoned and void. IMC 59180.

Reversed.

1. Estoppel--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

The Board will apply the doctrine of estoppel to a situation where, in a form letter listing 12 items of information necessary to perfect the filing of a certification of exemption from mining claim rental fees under the Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993, BLM informs the claimant that only one such item need be filed, but subsequently voids the claim because of a failure to file other information, which was also listed on the form letter. The failure of BLM in its form letter to disclose all defects in the filing constitutes a crucial misstatement in an official decision upon which the claimant relied to his detriment.

APPEARANCES: Rudy S. Sutlovich, Brier, Washington, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Rudy S. Sutlovich has appealed a determination of the Idaho State Office, Bureau of Land Management (BLM), dated July 1, 1994, declaring the Final End placer mining claim (IMC 59180), located on January 1, 1981, abandoned and void by operation of law for failure to either pay annual rental fees of $100 per claim or file a small miner exemption for the 1993 assessment year by August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal 1993 (Act), Pub. L. No. 102-381, 106 Stat. 1374 (1992). The Act provided that

> for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and

> the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c) [(1994)]), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993, in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378.

Implementing Departmental regulations provided as follows:

> Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of $100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of $200.

43 C.F.R. § 3833.1-5(b) (1993).

The only exemption provided from the rental requirement was the so-called "small miner exemption," available to claimants holding 10 or fewer claims on Federal lands who meet all the conditions set forth in 43 C.F.R. § 3833.1-6(a) (1993). Washburn Mining Co., 133 IBLA 294, 296 (1995). The applicant for a small miner exemption was required to file a separate request for such exemption, by August 31, 1993, for each of the assessment years for which he was seeking an exemption. 43 C.F.R. § 3833.1-7(d) (1993); John C. Schandelmeier, 138 IBLA 36, 38 (1997), and cases cited therein.

On August 12, 1993, Sutlovich filed with the State Office a small miner exemption certificate for the assessment year beginning at noon September 1, 1993, and ending at noon September 1, 1994 (1994 assessment year). At that time, Sutlovich did not file a separate small miner exemption certificate for the assessment year beginning at noon September 1, 1992, and ending at noon September 1, 1993 (1993 assessment year).

On August 17, 1993, the State Office sent Sutlovich a form letter, the first sentence of which stated: "In reviewing your certification of exemption received on August 12, 1993, the following information IS NEEDED to complete your filing." The form letter then enumerated 12 items. Before each item appeared a blank space, in which the State Office could place an "X," if it needed that information. The State Offive checked only one item on the notice sent to Sutlovich, No. 4. That item stated: "IDENTIFY THE APPROVED Notice or Plan of Operations (approval must be dated on or before August 31, 1993) by its assigned serial number issued by the Forest Service Ranger District or BLM District Office." No check mark appeared on the form for item No. 1: "A separate certification MUST BE

FILED FOR EACH ASSESSMENT YEAR." A return receipt in the file shows that Sutlovich received the State Office's August 17 letter on August 21, 1993.

On appeal, Sutlovich states:

> What I failed to do was file another copy of the [certification of exemption from payment of rental fee] form last year. * * * I had no intention of abandoning my mining claim. There was some confusion in your requiring me to submit two copies of the same form in 1993. This is the reason I only submitted one.

[1] The facts in this case warrant the application of the doctrine of estoppel. The Board has stated on a number of occasions that it will look to the elements of estoppel set forth in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970), as the initial test in determining estoppel questions presented to the Board. Carl Dresselhaus, 128 IBLA 26 (1993); Leitmotif Mining Co., 124 IBLA 344, 346 (1992). See also United States v. White, 118 IBLA 266, 303 (1991).

Those elements are: (1) the party to be estopped must know the facts; (2) that party must intend that its conduct be acted upon or must act so that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting the estoppel must be ignorant of the facts; and (4) the party asserting estoppel must rely on the former's conduct to its injury. Ptarmigan Co., 91 IBLA 113, 117 (1986), aff'd, Bolt v. United States, 994 F.2d 603 (9th Cir. 1991).

We have also adopted the rule of numerous courts that estoppel is an extraordinary remedy, especially as it relates to the public lands, (Harold E. Woods, 61 IBLA 359, 361 (1982)), and that estoppel against the Government in matters concerning the public lands must be based on affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D. F. Colson, 63 IBLA 221, 224 (1982); Arpee Jones, 61 IBLA 149, 151 (1982). However, this Board has held that oral statements by BLM are insufficient to support a claim of estoppel, and that erroneous advice upon which reliance is predicated must be in the form of a crucial misstatement in an official decision. Martin Faley, 116 IBLA 398, 402 (1990), and cases cited therein. Finally, we have noted that while estoppel may lie where reliance on Governmental statements deprived an individual of a right which he could have acquired, estoppel does not lie where the effect of such action would be to grant an individual a right not authorized by law. See Edward L. Ellis, 42 IBLA 66, 71 (1979).

Leitmotif Mining Co., supra, is a case similar in crucial respects to the case before us. It involved a decision by the Nevada State Office, BLM, rejecting for recordation notices of the location of mining claims because they were not filed in the proper BLM office as required by section 314(b) of FLPMA and 43 C.F.R. § 3833.1-2(a). Leitmotif located the claims on December 3, 1990, and, on January 24, 1991, in accordance with

oral instructions from BLM, filed the notices of location with the Nevada State Office. In a letter to Leitmotif dated January 28, 1991, the Nevada State Office explained that it was returning the certificates without taking any action on them because they had been accompanied by a post-dated check to cover the recordation fees, and that Leitmotif still had "until March 4 to resubmit [its] certificates along with a properly dated check in order for them to be timely filed."

The Board ruled in Leitmotif Mining Co., supra, that BLM knew the true facts, i.e., that the Arizona State Office was the proper office for recordation of the claims, but that it failed to so inform Leitmotif. Leitmotif refiled its notices with the Nevada State Office with the proper payment. Nine months later, the Nevada State Office issued the decision rejecting the notices of location for recordation. The Board found that Leitmotif was ignorant of the true facts, since the regulations governing recording of mining claims with BLM were ambiguous regarding where recordation filings were to be made. The Board also ruled that BLM's January 28, 1991, letter constituted an "official decision" within the meaning of Martin Faley, supra, and that Leitmotif had relied on it to its detriment.

In this case, BLM took the initiative of notifying Sutlovich that certain information was needed to complete his filing for a small miner exemption. It informed him that it needed to know the identity of the approved notice or plan of operations under which operations on the claim were being conducted. While BLM knew that a separate certification was also required for the 1993 assessment year and that Sutlovich had not provided a separate certification, it did not notify him, by checking that item on the form letter, to do so.

After Sutlovich received BLM's letter on August 21, 1993, he would have had time to make the necessary filing. Sutlovich's allegation that there was confusion regarding the necessity for filing two forms in 1993 is bolstered by the fact that BLM's form letter could reasonably be interpreted as indicating that no further certification was required.

In Martin Faley, supra the Board stated:

> We have expressly held that, as a precondition for invoking estoppel, "the erroneous advice upon which reliance is predicated must be 'in the form of a crucial misstatement in an official decision.'" Cyprus Western Coal Co., [103 IBLA 278 (1988)] at 284, quoting United States v. Morris, 19 IBLA 350, 377, 82 I.D. 146, 159 (1975), and cases cited therein.

In Leitmotif Mining Co., supra, this Board ruled that a letter from BLM to Leitmotif failing to explain that the Nevada State Office was not the proper place for filing a notice of location constituted an "official decision." Similarly, in this case, we find that BLM's form letter constitutes an "official decision" which misled or concealed material facts from Sutlovich. Having taken the action of advising Sutlovich how to perfect his filing, it was incumbent upon BLM to disclose all items

required to be corrected. By failing to do so, BLM concealed a material fact from Sutlovich and induced him not to file a certification of exemption for the 1993 assessment year.

This is not a situation where estoppel will result in Sutlovich being granted a right not authorized by law. Rather, this is a case in which Sutlovich could clearly have timely filed the required document, but for BLM's concealment of a material fact. In such circumstances, estoppel is properly invoked to prevent BLM from declaring the claim abandoned and void for failure to file a certification of exemption for the 1993 assessment year.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the determination appealed from is reversed.

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Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

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C. Randall Grant, Jr.
Administrative Judge